



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4847-99

21 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 10 February 1997, the Record Review Panel of the Physical Evaluation Board made preliminary findings that you were unfit for duty because of migraine headaches, which it rated at 10% disabling. It also determined that the ten orthopedic conditions diagnosed by your medical board were not separately unfitting and did not contribute to the unfitting migraine headache condition. You rejected the preliminary findings, and demanded a formal hearing; however, you withdrew your demand on 20 May 1997, and accepted the findings of the Record Review Panel. You were discharged from the Navy on 31 December 1997, with entitlement to disability severance pay. On 16 February 1999, the Department of Veterans Affairs (VA) awarded you 10% ratings for conditions of your shoulders and knees, and 0% for migraine headaches and hearing loss, for a combined rating of 40%. The VA denied your request for service connection for seven other conditions.

The fact that the VA awarded you a combined rating of 40% was not considered probative or error or injustice in your case. In this regard, it noted that the VA, unlike the military

departments, awards disability ratings without regard to the issue of fitness for military duty. As you have not demonstrated that any of your orthopedic conditions rendered you unfit for duty, or that your migraine condition was ratable at 30% or higher, the Board was unable to grant your request. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director